

PART 3
REMARKS

Claims 1 - 9 are now pending in this application. Claim 1 is amended to overcome the Examiner's rejection of the pending claims.

Claim Rejections - 35 U.S.C. § 103

The Examiner has again rejected claims 1 to 6 under 35 U.S.C. 103(a) as being unpatentable over cited U.S. Patent No. 5,259,809 - Rainey, Jr. in view of U.S. Patent No. 5,177,891 - Holt. The Applicant again, respectfully traverses this ground of rejection.

The sound utilized in the present invention is nowhere taught or even suggested in the cited Rainey Jr. patent which suggests the use of un-natural light, or in the cited Holt patent which suggests the recording of the sound of a particular species of bait fish. The Examiner asserts that the marine life which would attract the lobster, and the sounds made thereby, would be considered background sound in the lobster's habitat. However, in fact, the sound utilized in the present invention to attract marine crustaceans is neither taught, nor suggested in the cited patents. As disclosed on page 2, lines 17-21 of the Specification:

The apparatus of the present invention emits sounds which simulate the natural sounds present in the preferred habitat of lobster and other marine crustaceans. In particular, the sounds emitted simulate the sound of water splashing, gurgling and moving as waves, current or tidal shift impact on the reef, boulder, or other such geographic feature on the ocean floor. To lobsters and other crustaceans, these sounds represent shelter from prey and the presence of food source.

Further, on page 3, line 28 of the Specification:

The recorded sound is the noise made by the movement of a liquid, for example, the sound of water splashing or gurgling.

The Applicant submits that the sound utilized by the present invention is entirely different than that suggested in the Holt patent. Therefore, in view of the Examiner's statements discussed above and the foregoing discussion, in order to better and more clearly define the subject matter of the present invention and further distinguish over the cited patents, independent claims 1 and 4 are amended to recite that said sound is that of moving water. These amendments are fully supported in the Specification by the paragraph beginning at page 3, line 26 to page 4 line 8 as set forth above.

The surprising result discovered by the present inventor was that the specific sound of water moving, such as when it comes into contact with one or more geographical formations present in the preferred habitat of the crustacean, and in particular the sound of water splashing, gurgling and moving, attracted marine crustaceans, particularly lobster, in significantly greater numbers than known bait or devices.

The Examiner asserts that Rainey suggests that combinations of light, scent and sound were known to attract animals to traps. Rainey does suggest that it was known in fishing to use combinations of light, scent, and sound as an attractor. However, Rainey is only directed toward using light to attract plankton. Rainey distinguishes over the art in that the attractor disclosed is of a particular intensity which is not discussed in the prior art. The attractor disclosed is a diffused yellow green light with limited intensity (column 4, line 25), or a medium wattage ultraviolet light (column 4, line 31). Rainey suggests that a high intensity light will actually disperse plankton. It is submitted that the inventive aspect of Rainey was the discovery that a particular intensity of light would attract plankton.

Clearly, Rainey does not suggest that sound would attract plankton. However, even if it did, Rainey only suggests the attraction of bait for the desired catch, not the attraction of the desired catch. Rainey is directed towards the use of a particular intensity of light, and towards attracting bait, which in turn attracts the shrimp. In contrast, the present invention utilizes sound, and a particular sound that the inventors discovered had the surprising effect of attracting marine crustaceans in significantly greater numbers than known bait or devices. Further, in response to light, vibration, and movement such as dangling or towed lures, marine crustaceans, particularly lobsters, would retreat to safety to escape these threats. The invention of Rainey would therefore have the opposite effect on marine crustaceans than that provided by the present invention, and as a result it is submitted that Rainey teaches away from the present invention.

The sound disclosed in Holt is also directed towards attracting fish bait, in turn to attract game fish. The underwater vibratory disturbances or sound signals disclosed by Holt include underwater vibratory disturbances or sound signals which may be "any behaviour-modifying signal detectable underwater and generally referred to as sounds, and may include signals produced by surface weather disturbances, surface bait such as insects, crustaceans such as crawfish and the like, bait fish signatures, and underwater disturbances produced by fish swimming or rapidly turning or generated in association with social or reproductive behaviour of fish".

Nowhere does Holt disclose or even suggest the subject matter of the present invention. In fact, as with Rainey, the sounds disclosed by Holt would have the opposite effect (or no effect) than the background noise of the present invention which attracts marine crustaceans, in surprisingly greater amounts than previously possible with known bait and devices.

Neither of the cited patents teach or even suggest the use of a background sound that simulates a marine crustacean's preferred habitat, as represented by moving water, to attract that crustacean. The Examiner suggests that the sound of bait is normal background sound found in the habitat of all animals and as such is considered to constitute background sound. While the Applicant agrees with this statement, the present invention does not utilize the sound of bait.

However, as previously set forth, in order to more clearly define the background sound of the present invention, and to further distinguish the present invention from the cited patents, the Applicant has amended independent claims 1 and 4 to specify that the background sound comprises the noise made by moving water. This sound is not taught by Rainey Jr., or Holt, taken alone or in combination, nor would it be obvious in view of these patents to use the sound of moving water, and to realize the surprising result of using that sound.

The Examiner states that Rainey Jr. was relied upon only to teach the basic concept of a crustacean trap using an artificial component to attract crustaceans. However, as noted above, Rainey Jr. teaches away from the present invention as the artificial light taught therein would in fact have the opposite effect on crustaceans. The Examiner asserts that the Holt device was relied upon to teach that it is known in the art to generate sounds in order to attract aquatic life. Therefore, the Examiner asserts that the combination of these patents meet the limitation set forth in the present claims, and with respect to the "background sound" being generated, the marine life which would attract the lobster and the sounds made thereby would be background sound in the lobster's habitat. However, the Applicant disagrees with this assertion, particularly in view of amended claims 1 and 4 which now specify the nature of the background sound, which is not bait, and is not "the marine life".

New claims 10 and 11, dependent from independent claim 1, and claims 14 and 17, dependent from independent claim 4, have been added to further define the sound of moving water. Claims 12, 16 and 18, dependent from claims 11, 14, and 15 respectively, are similar to dependent claim 2. Claims 13, 17, and 19, dependent from claims 12, 16, and 18 respectively, are similar to dependent claim 3. New claim 10 - 19 are submitted to be allowable for all of the reasons set forth above with respect to claims 1 and 4.

It is therefore submitted that the subject matter of amended claims 1, 2, and 4 and claims 3 - 6, and new claims 10 - 19, which directly or indirectly depend from claim 1 or 4 are neither taught, nor suggested by the cited patents. It would not have been obvious to a person skilled in the art to combine the teachings of the cited Rainey, Jr. and Holt patents to arrive at the present invention. The surprising result discovered by the present inventors is nowhere even remotely suggested in the cited patents, and in fact, the nature of the attractants in the cited patents would be unsuitable, and have the opposite effect on marine crustaceans. Withdrawal of the Examiner's objection under 25 USC § 103 to claims 1 - 6, is respectfully requested.

Neither cited patent discloses a device that would be able to directly attract a marine crustacean. Rather, both cited patents are directed towards attracting bait, not the desired "animal". Accordingly a person skilled in the art attempting to arrive at the present invention would not be motivated to look to the teachings of the cited patents.

As set forth in the earlier response, the mere fact that patents might be combined or modified does not render the resultant combination obvious, unless the prior art also provides a motivation to combine the teaching of the patents. Rainey, Jr. teaches the use of light to attract bait to a trap. However, light has the reverse effect on most crustaceans, and therefore a worker skilled in the art would not have been prompted to combine the teaching of Rainey, Jr. with the apparatus of Holt. Further, Holt uses the

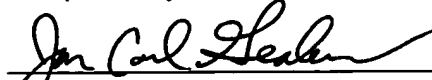
sound produced by crustaceans to attract game fish. Therefore, one could not combine the apparatus or method of Holt with that of Rainey, Jr. to attract marine crustaceans.

It is respectfully submitted that the Examiner's rejection of claims 7 and 9 under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. as modified by Holt as applied to claims 1 - 6 above, and further in view of Rodgers (U.S. Patent 5,697,182), is overcome for all of the reasons set forth above with respect to claim 1. Similarly, it is respectfully submitted that the Examiner's rejection of claims 7 and 8 under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. as modified by Holt as applied to claims 1 - 6 above, and further in view of DuMont (U.S. Patent 5,331,760) is overcome for all the reasons set forth above with respect to claim 1.

Accordingly, the Applicant respectfully submits that the cited patents neither teach nor disclose the subject matter of the present invention, and that one skilled in the art or science would not be motivated by the cited patents, taken either alone, or in combination, to arrive at the subject matter of the present invention as now defined by claims 1 - 19.

It is respectfully submitted that the subject application is in condition for allowance, and any early allowance of this application is respectfully requested. Should the Examiner not find all of the claims allowable, the below signed attorney would very much appreciate a telephone call from the Examiner to discuss possible grounds for finding the claims allowable.

Respectfully submitted,



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PART 4

Correction to first paragraph of Background of the Invention, page 1, lines 11

- 17:

Lobsters and other marine crustaceans prefer as their habitat areas which provide crevasses, orifices and other such [geographical] geological features. These features enable the lobsters to hide from their predators yet still access their food supply. Such habitats include ocean reefs, cobble bottoms, and areas with rocks or boulders. There is a background noise of splashing, gurgling and moving water inherent to these preferred habitats. The noise results from the impact of water in the form of waves, current or tidal shift on the reef, boulder or other such [geographical] geological feature.

Replacement for the first paragraph of Summary of the Invention, page 2, lines 16 - 25:

The apparatus of the present invention emits sounds which simulate the natural sounds present in the preferred habitat of lobsters and other marine crustaceans. In particular, the sounds emitted simulate the sound of water splashing, gurgling and moving as waves, current or tidal shift impact on the reef, boulder or other such [geographic] geological feature on the ocean floor. To lobsters and other crustaceans, these sounds represent shelter from prey and the presence of food source. When the apparatus is placed in a trap and it emits the simulated sound, lobsters and other crustaceans are attracted to the source of the sound and enter the trap. As a result, the use of the apparatus significantly increases the number of lobster and other crustaceans caught over a certain period of time which, in turn, increases the productivity and profitability of the lobster harvester.

Replacement for the first full paragraph on page 6, lines 3 - 10:

When the apparatus is in regular use, contact points 18 are cleaned on a periodic basis, for example once per week, to ensure completion of the circuit. To clean the contact points 18, the harvester simply rubs an abrasive scuff pad, which may be sold with the apparatus or separately, over the end of each contact point for several seconds. Contact points 18 can be routinely cleaned in this manner when the traps are brought out of the water to be checked for harvest. As [contacts] contact points 18 are located on the exterior of container body 12, they can be accessed by the harvester without having to remove the apparatus from the trap. Thus, minimal time is spent by the harvester to clean the contact points.

PART 5

1. (Twice Amended) An apparatus which attracts marine crustaceans to a desired location, comprising:
 - (a) a [waterproof] watertight container [having an exterior surface];
 - (b) a storage means housed in said container for storing recorded sound of moving water [containing a recorded sound that simulates a background sound present in a preferred habitat of said marine crustacean, which storage means is housed in the container];
 - (c) a sound transmission means housed in said container for transmitting said recorded sound from said desired location [which sound transmission means are housed in the container]; and
 - (d) a power supply [that is] housed in the container for supplying power to said storage means and said sound transmission means.
2. (Amended) The apparatus of claim [1] 10 wherein said marine crustacean is a lobster.
4. (Amended) A method of attracting marine crustaceans to a desired location comprising emitting from said location a recorded sound [that simulates a background sound present in a preferred habitat of said marine crustacean] of moving water.